

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SAGICOR CORPORATE CAPITAL
LIMITED a/s/o CAMELOT CLUB
CONDOMINIUM ASSOCIATION,
INC.,

Plaintiff,

v.

DELTA PLUMBING, INC.,

Defendant.

CIVIL ACTION

No. 1:13-cv-03327-SCJ

ORDER

This matter is before the Court on Defendant Delta Plumbing, Inc.'s ("Defendant") Motion to Dismiss [Doc. No. 7]. In addition, the Court addresses how this action's discovery period shall proceed.

I. DISCUSSION

A. Defendant's Motion to Dismiss

Defendant filed its motion to dismiss Plaintiff Sagicor Corporate Capital Limited, as subrogees of Camelot Club Condominium Association, Inc.'s ("Plaintiff") original complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure on October 31, 2013 [Doc. No. 7, 9].¹ On November 21, 2013, Plaintiff filed

¹ Along with its motion to dismiss, Defendant contemporaneously filed an answer to Plaintiff's original complaint [Doc. No. 5, 1].

an amended complaint [Doc. No. 12] pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, which states a plaintiff has the right to amend his pleading once as a matter of course “21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(B).²

Of course, Plaintiff’s amended complaint “supersedes the initial complaint and becomes the operative pleading in the case.” *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1219 (11th Cir. 2007). Because Plaintiff’s amended complaint is now the operative pleading in this action, Defendant’s motion to dismiss is rendered moot. *See Taylor v. Alabama*, 275 F. App’x 836, 838 (11th Cir. 2008) (“Subsequently, Plaintiffs amended their complaint and Defendants’ motion to dismiss [the original complaint] became moot.”). Accordingly, in the interest of maintaining clarity in the record, Defendant’s Motion to Dismiss [Doc. No. 7] is hereby **DISMISSED AS MOOT**.

B. Issues Regarding This Action’s Future Discovery Period

The Court notes that Defendant argues its motion to dismiss is not rendered moot because its rationale applies equally to Plaintiff’s amended complaint [Doc.

² As Defendant’s answer and motion to dismiss regarding the original complaint were filed on the same day, Plaintiff’s amended complaint was timely filed.

No. 18, 15]. This argument is without merit, as Defendant's motion to dismiss is unquestionably *directed* towards Plaintiff's original complaint. However, as the Court does not make a substantive ruling on its motion to dismiss, Defendant may file a new motion directed towards Plaintiff's amended complaint that contains the same jurisdictional arguments.

The Court further notes that Plaintiff and Defendant have filed dueling motions regarding how discovery should proceed in this action [Doc. No. 27, 1; Doc. No. 28, 1]. In its motion regarding discovery, Defendant requests "that the Court consider staying discovery until its Motion to Dismiss is ruled on" [Doc. No. 27, 1-2]. As Defendant's motion to dismiss is moot pursuant to Plaintiff's amended complaint, the Court cannot stay this action's discovery as of the date of this order. Nevertheless, the Court fully anticipates that Defendant will file a renewed motion attacking Plaintiff's amended complaint for lack of subject matter jurisdiction.³ The Court believes that, in the event such a motion is filed, a stay on discovery until a ruling is made on said motion would be proper. However, in the event Defendant fails to file such a motion within **10 days** from the date of this order, the Court shall

³ As Defendant has filed an answer to Plaintiff's amended complaint [Doc. No. 17], any motion challenging this Court's subject matter jurisdiction over Plaintiff's amended complaint would constitute a motion for judgment on the pleadings rather than a motion to dismiss.

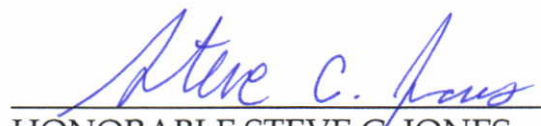
deem a stay on discovery unnecessary and will address how discovery shall proceed in this action.

II. CONCLUSION

For the above stated reasons, Defendant's Motion to Dismiss [Doc. No. 7] is hereby **DISMISSED AS MOOT**.

In the event Defendant files a motion challenging the Court's subject matter jurisdiction over Plaintiff's amended complaint within **10 days** from the date of this order, the Court will stay discovery pending a ruling on said motion. However, in the event Defendant fails to file such a motion, the Court shall deem a stay on discovery unnecessary and will address how discovery shall proceed in this action.

IT IS SO ORDERED, this 10th day of June, 2014.


HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE